CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 213.

MARY AMIS QUINLAN, EXECUTRIX,

vs.

GREEN COUNTY, KENTUCKY.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

FILED FEBRUARY 28, 1906.

(20,110.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 10, 1906.

1 No. 1440.

United States Circuit Court of Appeals, Sixth Circuit.

MARY AMIS QUINLAN, Ex'tr'x, Plaintiff in Error,
v.
GREEN COUNTY, KENTUCKY, Defendant in Error.

Error to the Circuit Court of the United States for the Western District of Kentucky.

This was an action upon certain bonds and coupons purporting to have been issued by Green county, one of the counties of the State of Kentucky. The parties stipulated upon the record to waive a jury and submit the issues of fact and law to the court.

The court upon all of the evidence made the following finding of facts and law:

Finding of Fact.

1. The court finds that the plaintiff is a citizen of the state of New York and was so when this action was instituted on the 28th day of March, 1899, and that the plaintiff was then the *bona fide* holder for value of the bonds and coupons sued on, and fully entitled to sue the defendant thereon in this court.

2. That the Cumberland & Ohio Railroad Company was a corporation organized and existing under the laws of the state of Kentucky, with power to receive a subscription to its capital stock from the defendant, Green County, and said county was authorized conformably to law to make a subscription to said capital stock and to pay for the same in the bonds of said county.

3. That on June 17th, 1869, there was, as appears from the records thereof, presented to the Green County Court by the commissioners of said railroad company the following request:

2 "We, the undersigned, commissioners of the Cumberland and Ohio Railroad Company, hereby request that the County Court of Green County submit to a vote of the qualified voters of said county the question, 'Whether said court shall subscribe for and on behalf of said county, and in pursuance of the provisions of the charter of said railroad company, two hundred and fifty thousand dollars to the capital stock of said company, payable in the bonds of said county, having twenty years to run and bearing six per cent. interest from date, upon the condition that said company shall locate and construct said railroad through Green County and within one mile of the town of Greensburg in said county, and shall expend the amount so subscribed within the limits of Green County; and also upon the further conditions that said bonds shall not be issued or said county pay any part of either principal or interest on said amount subscribed as aforesaid until said county of Green shall be fully and completely exonerated from the payment of the capital stock sub-

scribed for by the County Court of said county for and on behalf of said county to the Elizabethtown and Tennessee Railroad Company."

4. That on the same day, namely, on June 17th, 1869, the County Judge of Green County, acting alone and as the County Court, entered an order in the said court in the following language:

"Present, Thos. R. Barnett, Judge.

"Whereas the Commissioners of the Cumberland and Ohio Railroad Company by virtue of the authority delegated to them by the charter of said company, have requested the County Court of Green County to order an election in the said county of Green, and to submit to the qualified voters of said county the question whether said county court shall subscribe for and on behalf of said county, two hundred and fifty thousand dollars to the capital stock of the Cumberland and Ohio Railroad Company, and payable in the bonds, of said county, having twenty years to run and bearing six per cent. interest from date, and upon condition that said company shall locate and construct said railroad through the said county of Green, and within one mile of the town of Greensburg, in said county, and shall expend the amount so subscribed within the limits of Green County; and also upon the further condition that said bonds shall not be issued or said county pay any part of the principal
3 or interest on said amount subscribed to said Cumberland and Ohio Railroad Company, until said county of Green is fully and completely exonerated from the payment of the capital stock voted by said county, and authorized to be subscribed by said Green County Court to the Elizabethtown & Tennessee Railroad or any part of the interest thereon. It is therefore, ordered by the court that an election by the qualified vote-s of Green county, at the voting places in said county, be held and conducted by the several officers as prescribed by law for holding elections, on the third day of July, 1869, to vote on the question as to whether or not the said county court shall for and on behalf of said county subscribe two hundred and fifty thousand dollars to the capital stock of the said Cumberland & Ohio Railroad conditioned and to be paid, as above stated."

5. That at the election held pursuant to said order there were cast in favor of said proposition and subscription a majority of the votes of the qualified voters of said county, and this fact, upon being duly ascertained, was certified by the proper officers as required by law.

6. That on the third day of June, 1870, the County Judge of said county, acting alone and as the county court of said county, entered an order in said court as follows:

"Present, Thomas R. Barnett, Judge.

"Whereas, in pursuance of an order of this court made on the 17th day of June, 1869, an election was held in said county of Green, on the third day of July, 1869, at the several precincts of said county, and it appearing that a majority of the qualified voters at said election decided that the county of Greene should subscribe for two hundred and fifty thousand dollars of the capital stock of the Cumberland & Ohio Railroad Company; now it further appearing that said election was held in conformity with the law, and in accordance with the provisions of the charter of said company, now, therefore, I

Thomas R. Barnett, the presiding judge of the Green County Court, by virtue of the authority in me vested by law, and to carry out the wishes of said voters, do hereby subscribe for two hundred and fifty thousand dollars of the capital stock of said Cumberland and Ohio Railroad Company, for and on behalf of said county of Green, which subscription is to be paid in the bonds of said county as prescribed in said order of submission, and this subscription is made with
4 the conditions set out in the order of this court, ordering said election and now of record in the office of this county."

7. That on the 12th day of October, 1871, the said county Judge of said county, acting alone and as the county court of said county, entered an order in said court in the following language:

"Present, Thomas R. Barnett, Judge.

"On motion of E. H. Hobson, Director of the Cumberland and Ohio Railroad, it is ordered that Z. F. Smith, President of the Cumberland and Ohio Railroad, be, and he is hereby authorized to have printed for the county of Green the bonds to the amount of two hundred and fifty thousand, dollars, the amount of the subscription of Green county to the said railroad, in the following denominations, to-wit, the same to be conditioned as specified in the order submitting the vote of the said county;

"125 bonds at $1000	$125,000 00
"200 bonds at $500	100,000 00
"250 bonds at $100	25,000 00
	$250,000.00

8. That pursuant to all that was done, as aforesaid, the defendant, Green County, issued and delivered to the said Cumberland & Ohio Railroad Company $250,000 of its bonds of the description aforesaid except that the said conditions were not stated therein, in payment of said subscriptions to said capital stock, and thereupon there was delivered to said county in payment thereof, and said county received, and has ever since held and owned, the certificates of the said railroad company for the 2500 shares of $100 each of its capital stock so paid for by said bonds.

9. That the $47,509 of bonds and coupons sued on in this action were part of the bonds thus issued and delivered to said railroad company in payment for said stock.

10. That while the proposed line of said railroad was located through said county from its northern line to its southern line, and within one mile of Greensburg, yet that only about five miles of said railroad has ever been constructed or attempted to be constructed in said county, the part thus constructed extending from the northernmost line of said county to the town of Greensburg, the countyseat; which town is located about fifteen miles from the southernmost line of the county and about as distant from any other line of the county except the northern line.

5 11. That only $150,000 of the bonds thus issued, or the proceeds thereof, were expended within the limits of Green county. No other part of said bonds was expended in said county.

12. That with said $150,000 of said bonds the grading, bridging and tunneling on the track of said railroad was done and paid for over the five miles aforesaid, but no further, and when this was done, the work on the railroad was suspended for some years. Afterwards the rails and ties and superstructure generally were put upon the track theretofore graded and the railway was completed from the northernmost line of the county to Greensburg under the terms of its lease, by the Louisville & Nashville Railroad Company at its own expense, and not with any of the bonds issued as aforesaid by the defendant.

13. That on the 15th day of August, 1872, at a called term of the Green County Court, over which Thomas R. Barnett, County Judge, presided, and no justice of the peace being present, the following order was entered by said court:

"Present Thos. R. Barnett, Judge.

"Application was this day made to the presiding judge of the County Court of Green county, by the President and Board of Directors of the Cumberland and Ohio Railroad Company to issue the balance of the bonds of said county to the amount of the subscriptions of said county of Green to said Cumberland & Ohio Railroad Company, and the court being sufficiently advised, it is ordered by the court that the balance of said bonds be and they are hereby ordered to be issued, the same to be signed by the judge of said county court of Green county, and countersigned by the clerk of said court, as required by the charter of said company."

14. That except as to the number of the bonds and the amount agreed to be paid therein the bonds sued on were each of the following; namely:

"UNITED STATES OF AMERICA,
County of Green, State of Kentucky:

$500.00.

For the Cumberland and Ohio Railroad.

"Twenty years after date, the county of Green, in the state of Kentucky, will pay to the holder of this bond the sum of five hundred dollars with interest thereon at the rate of six per cent. per annum, payable semi-annually upon presentation of the proper coupons hereto attached, the principal and interest being payable at the Bank of America, in the city of New York.

6 "In testimony whereof, the Judge of said county of Green has hereunto set his hands and affixed the seal of said county, on the first day of April, A. D. 1871, and caused the same to be attested by the county clerk, who has also signed the coupons hereto attached.

"(Green County Seal.)

"T. R. BARNETT, *Judge.*
"D. T. TOWLES, *Clerk.*"

As appears on the face of each of said bonds there was no recital therein of any of the facts herein found to be true.

15. That the plaintiff knew when he purchased the bonds sued on that the railroad had not been constructed in Green county otherwise than as herein found to be the fact, namely, from the northern line of said county to the town of Greensburg, but no further.

16. That in the year 1868, upon a proposition therefor being submitted to the vote of the qualified voters of Green County, the majority of said qualified voters voted in favor of a proposition to subscribe for $300,000 of the capital stock of the Elizabethtown & Tennessee Railroad Company, and upon the said result of the election being properly ascertained and certified the county judge of Green county, sitting alone and as the county court of said county, made and entered of record in said court the following orders:

1868.

"Green County Court, May Called Term, 1868, 20th Day of May.

Present, T. R. Barnett, Judge.

"This day T. R. Barnett, Presiding Judge, and D. T. Towles, Clerk of the Green county court, this day produced their certificate in words and figures as follows, viz: We, T. R. Barnett, Presiding Judge, and D. T. Towles, Clerk of the Green county court, duly authorized to compare the Poll Book of Green county, certify that an election — held in said county at the various voting places in said county, on the 16th day of May, 1868, on the question whether the county court of Green county shall, for and on behalf of said county subscribe for three thousand shares in capital stock of Elizabethtown & Tennessee Railroad Co. to be paid for in the bonds of said county, payable in twenty years and bearing six per cent. interest payable semi-annually in the city of New York, with interest coupons attached thereto, and that 586 votes were cast for said subscription and 204 against said subscription.

May 20th, 1868.

7 "T. R. BARNETT.
"D. T. TOWLES.

"It is therefore ordered by the court that the said vote be, and is now, entered of record, as follows, to-wit: 585 votes cast for said subscription and 204 votes were cast against said subscription, showing that there is a majority for said subscription of three hundred and eighty-two votes.

"It is now, therefore, ordered that the clerk of this court, for and on behalf of the county of Green, make said subscription on the terms specified in the order submitting the question to a vote as aforesaid."

17. That no formal or express exoneration of said county from the payment of said last named subscription was ever made or attempted, but nothing further has, up to this date, ever been done in respect to it, and neither bonds by the county nor stock by the said last

named railroad company, have ever been issued or delivered in execution of said orders or under the terms of said subscription.

Upon consideration of the facts hereinbefore found to be true, and of the opinion of the Court of Appeals, in the case of J. D. Shortell *v.* Green County, the court, in deference to said opinion, has reached the following:

Conclusions of Law.

1. That the plaintiff is not entitled to recover because the conditions upon which the subscription for the capital stock of the Cumberland & Ohio Railroad Company was made and upon which the bonds sued on were issued have not been performed or complied with, and

2. That the failure to recite in the bonds any of the facts herein found to be true, or any of the conditions upon which the bonds were issued, is immaterial as against the defense that there was a failure to perform the said conditions.

Judgment.

In consideration of the premises it is considered and adjudged by the court that the plaintiff's petition be and it is dismissed and that the defendant recover of the plaintiff its cost herein expended, and it may have execution therefor. To this judgment and to each part of it the plaintiff excepts.

8 Upon the facts thus found and determined the plaintiff's petition was dismissed. The plaintiff thereupon sued out this writ of error.

This court desires the opinion and direction of the Supreme Court in respect to certain questions of law arising upon the finding of facts herein set out and accordingly certifies to the Supreme Court the following interrogatories:

1st. Do the facts found by the Circuit Court conclude or estop the county from denying liability to the plaintiff upon the bonds and coupons in suit, by reason of non-compliance with the terms and conditions imposed by the favorable vote of the county authorizing a subscription to the stock of the Cumberland and Ohio Railroad Company and the issuance of bonds in payment therefor? Or, if this question should be deemed too broad, then,

2nd. Assuming the facts to be as found, was a *bona fide* purchaser before maturity of these bonds and coupons for value, entitled to assume in his purchase that Green County had before their issuance been "fully and completely exonerated from the payment of the capital stock subscribed for by the County Court of said county for and in behalf of said county to the Elizabethtown and Tennessee Railroad Company?"

HORACE H. LURTON,
HENRY F. SEVERINS,
J. K. RICHARDS,
Circuit Judges.

9 United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA, *Sixth Judicial Circuit, ss:*

I, Frank O. Loveland, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing certificate and statement of facts in the case of Mary Amis Quinlan, Executrix, *vs.* Green County, Kentucky, was duly filed and entered of record in my office by order of said Court, and as directed by said Court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said Court, at the City of Cincinnati, Ohio, this 19th day of February, A. D. 1906.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

FRANK O. LOVELAND,
Clerk of United States Circuit Court
of Appeals for the Sixth Circuit.

Endorsed on cover: File No. 20,110. U. S. circuit court appeals, 6th circuit. Term No. 213. Mary Amis Quinlan, executrix, *vs.* Green County, Kentucky. (Certificate.) Filed February 28th, 1906. File No. 20,110.